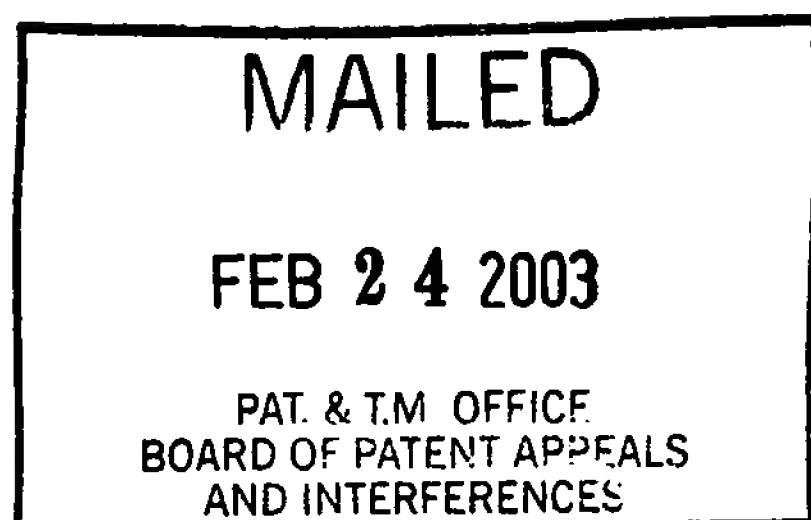




## UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES  
BOX INTERFERENCE, WASHINGTON, D.C. 20231

Filed by: Judge Richard Torczon  
Telephone: (703) 308-9797  
Facsimile: (703) 305-0942



Patentee: LICHTENWALTER  
Application No.: 09/337,710, now Patent No.  
6,255,053, granted 07/03/01  
Filed: 06/21/99  
For: DRY BIOCHEMICAL ASSAY PLATE AND  
METHOD FOR MAKING THE SAME  
Accorded benefit: Application 08/412,498, filed  
03/28/95

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 105,089.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

  
RICHARD TORCZON  
Administrative Patent Judge

BOX INTERFERENCE  
WASHINGTON DC 20231  
703-308-9797  
703-305-0942 (fax)

Paper 1

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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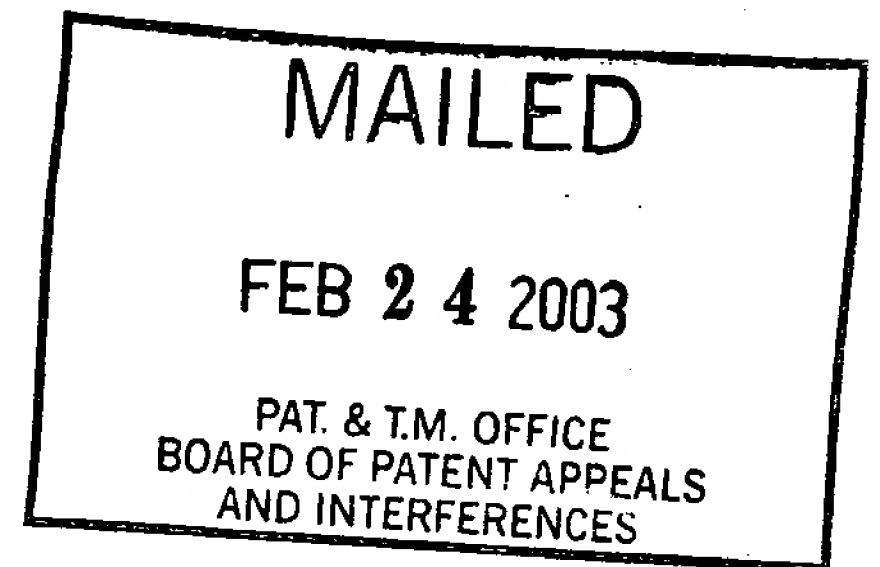
Patent Interference No. 105,089

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**AGILENT TECHNOLOGIES, INC.**  
(5,922,534 and 6,255,053),  
Junior Party,

v.

**AFFYMETRIX, INC.**  
(09/614,068),  
Senior Party.



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**NOTICE DECLARING INTERFERENCE**  
(37 CFR § 1.611)

**Part A. Declaration of interference**

An interference is declared (35 U.S.C. § 135(a)) between the captioned parties. Details of the application, patents, count, and claims designated as corresponding to the count appear in Parts E and F of this NOTICE DECLARING INTERFERENCE.

**Part B. Administrative patent judge assigned  
to administer the interference**

The interference has been assigned to Richard Torczon. 37 CFR § 1.610.

**Part C. Standing order**

A Trial Section STANDING ORDER accompanies this NOTICE DECLARING INTERFERENCE. The STANDING ORDER applies to this interference.

**Part D. Conference call to set dates**

A telephone conference call to set dates for action in this interference is scheduled for **4 p.m. (Eastern) on 16 April 2003.** (The Board will initiate the call.)

No later than **two business days** prior to the conference call, each party shall file and serve by facsimile a list of the preliminary motions the party intends to file. See § 17 of the STANDING ORDER.

A copy of a sample order setting times for taking action during the preliminary motion phase of the interference accompanies this NOTICE DECLARING INTERFERENCE. Counsel are encouraged to discuss the order by telephone prior to the telephone conference call and to reach an agreement as to dates for taking action. A typical preliminary motion period lasts approximately nine months. Counsel should be prepared to justify any request for a shorter or longer period.

Electronic filing and service

The Board is encouraging parties to participate in an electronic filing and service pilot program. Details are available in Univ. of New Mexico v. Fordham Univ., (Paper 21) (BPAI 2001): <http://www.uspto.gov/web/offices/dcom/bpai/its/104761-021.pdf>

The parties should be prepared to discuss their participation during the conference.

**Part E. The parties to this interference**

Junior Party

**Inventor:** KAY LICHTENWALTER of San Jose, CALIFORNIA

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**Patent:** 5,922,534, issued 13 July 1999 (08/412,498, filed 28 March 1995)

**Title:** Dry biochemical assay plate and method for making same

**Priority benefit:** None

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**Patent:** 6,255,053 B1, issued 3 July 2001 (09/337,710, filed 21 June 1999)

**Title:** Dry biochemical assay plate and method for making same

**Priority benefit:** 08/412,498, filed 28 March 1995

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**Assignee:** Agilent Technologies, Inc.

**Attorneys:** See last page

**Address:** See last page

Senior Party

**Inventors:** STEPHEN P.A. FODOR of Palo Alto, CALIFORNIA;  
LUBERT STRYER of Stanford, CALIFORNIA;  
MICHAEL C. PIRRUNG of Durham, NORTH CAROLINA; and  
J. LEIGHTON READ of Palo Alto, CALIFORNIA

**Application:** 09/614,068, filed 11 July 2000

**Title:** Very large scale immobilized polymer synthesis

**Priority benefit:** 08/563,759, filed 29 November 1995 (6,506,558 B1, issued 14 January 2003)  
08/348,471, filed 30 November 1994 (6,420,169 B1, issued 16 July 2002)  
07/805,727, filed 6 December 1991 (5,424,186, issued 13 June 1995)

**Assignee:** Affymetrix, Inc.

**Attorneys:** See last page

**Address:** See last page

**Part F. Count and claims of the parties**

Count 1

The assay plate of 5,922,534 claim 1.

The claims of the parties are:

Agilent 534: 1-18

Agilent 053: 1-5

Affymetrix: 8-40

The claims corresponding to Count 1:

Agilent 534: 1-18

Agilent 053: 1-5

Affymetrix: 8-40

The claims not corresponding to Count 1:

Agilent 534: None

Agilent 053: None

Affymetrix: None

**Part G. Heading to be used on papers**

Addendum 1 provides the heading that shall be used on all papers filed in the interference. See § 18 of the STANDING ORDER.

**Part H. Summary of dates for taking action**

Addendum 2 provides a summary of dates and times for taking action set in the STANDING ORDER.

**Part I. Order form for requesting file copies**

Addendum 3 provides an order form for requesting file copies. Use of the form will expedite the processing of your request.

  
RICHARD TORCZON  
Administrative Patent Judge

**Enclosures:**

- Copy of STANDING ORDER
- Copy of order used for setting times for taking action in the preliminary motion phase of the interference
- Copy of order used for setting times for taking action in the priority phase of the interference
- Copy of U.S. Patents 5,922,534 and 6,255,053
- Copy of the application claims for 09/614,068

Interference No. 105,089  
Agilent Tech., Inc. v. Affymetrix, Inc.

Paper 1  
Page 6

cc (via overnight carrier):

Counsel for Agilent Tech., Inc.:

Gordon Stewart  
AGILENT TECHNOLOGIES, INC.  
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SAN FRANCISCO CA 94111-3834  
Tel: 650-326-2400  
Fax: 650-326-2422

**ADDENDUM 1**

Filed on behalf of: Party \_\_\_\_\_

Paper No. \_\_\_\_\_<sup>1</sup>

By:               Name of lead counsel  
                  Name of backup counsel  
                  Street address  
                  City, State, and ZIP Code  
                  Tel:  
                  Fax:

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**  
(Administrative Patent Judge Torczon)

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**AGILENT TECHNOLOGIES, INC.**  
(5,922,534 and 6,255,053),  
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Senior Party.

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Patent Interference No. 105,089

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**TITLE OF PAPER**

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<sup>1</sup> Leave blank for the Board to insert the paper number when the paper is entered into the administrative record.



## **ADDENDUM 2**

### **SUMMARY OF DATES FOR TAKING ACTION**

Dates and times for taking action are set in the following sections of the **STANDING ORDER**:

1.     **§ 7** - date for identifying lead and backup counsel.
2.     **§ 8** - date for identifying any real party in interest.
3.     **§ 9** - date for requesting copies of involved and benefit applications and patents.
4.     **§ 17** - date for filing list of preliminary motions to be filed.
5.     **§ 19** - date for accomplishing certain discovery.
6.     **§ 20** - date for filing clean copy of claims.
7.     **§ 21** - date for filing clean copy of claims in cases with drawings or claims containing a means-plus-function limitation.
8.     **§ 23** - times for filing oppositions to Rule 635 motions and times for filing replies to oppositions.
9.     **§ 33** - time for objecting to admissibility of evidence.
10.    **§ 34** - time for serving supplemental affidavits or evidence to respond to an objection to admissibility of evidence.
11.    **§ 35** - times when cross-examination can take place.
12.    **§ 45** - times for taking action with respect to settlement discussions

**ADDENDUM 3**

**FILE COPY REQUEST**  
**Patent Interference No. 105,089**

A copy of Part E of this NOTICE DECLARING INTERFERENCE should be attached to this FILE COPY REQUEST, with a hand-drawn circle around the patents and applications for which a copy of a file wrapper is desired.

To facilitate processing of this FILE COPY REQUEST, the following information should be included:

1. Charge fees to USPTO Deposit Account No. \_\_\_\_\_
2. Complete address, including street, city, state, zip code and telephone number (do not list a Post Office box inasmuch as file copies are sent via commercial overnight courier).

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Telephone, including area code: \_\_\_\_\_